

UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:

Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

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MEMBERS:

Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

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April 13, 2006

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO.
ST. LOUIS

Robert C. Heinemann, Clerk
130 United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: MDL-1596 -- In re Zyprexa Products Liability Litigation

(See Attached Schedule A of Order)

Dear Mr. Heinemann:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A list of involved counsel is attached.

Very truly,

Michael J. Beck
Clerk of the Panel

By/ *Mecca S. Carter*
Mecca S. Carter
Deputy Clerk

Enclosures/Attachment

cc: Transferee Judge: Judge Jack B. Weinstein
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: James Woodward; Patricia L. Brune

APR 13 2006

DOCKET NO. 1596

FILED
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES,* CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

**ORDER OF TRANSFER AND SIMULTANEOUS SEPARATION AND
REMAND OF CERTAIN CLAIMS**

Before the Panel are motions brought, respectively, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 21 of the Eastern District of Missouri actions and the Western District of Missouri action listed on Schedule A.¹ These plaintiffs move the Panel to vacate its orders conditionally transferring the actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Also before the Panel are motions brought by defendant Janssen, L.P. f/k/a Janssen Pharmaceutica, Inc. (Janssen) to vacate the Panel's orders insofar as they relate to claims concerning the prescription medication Risperdal in the 23 Eastern District of Missouri actions listed on Schedule A. Similarly, defendant AstraZeneca Pharmaceuticals, LLP (AstraZeneca) moves to vacate the Panel's order insofar as it relates to claims concerning the prescription medication Seroquel in the Western District of Missouri action. Specifically, Janssen and AstraZeneca ask the Panel to separate and simultaneously remand the claims against them to the respective transferor courts at the time of transfer. Two physician defendants also request Section 1407 remand of the claims against them in one Eastern District of Missouri action² and the Western District of Missouri action, respectively. Defendant Eli Lilly and Co. (Lilly) opposes the motions to vacate brought by plaintiffs and urges inclusion of the actions in the MDL-1596 proceedings; however, Lilly supports separation and remand under Section 1407 of the claims against the other pharmaceutical defendants.

On the basis of the papers filed and hearing session held, the Panel finds that all 24 actions encompassed by the various overlapping motions involve common questions of fact with the actions in this litigation previously transferred to the Eastern District of New York, and that transfer of these

* Judge Hodges took no part in the decision of this matter.

¹ Plaintiffs did not include two Eastern District of Missouri actions listed on Schedule A – *Carole Holden v. Janssen Pharmaceutica, L.P., et al.*, C.A. No. 4:05-2121 and *Erin Martin v. Janssen Pharmaceutica, L.P., et al.*, C.A. No. 4:05-2190 – in their motions.

² *Andrea Hanks v. Eli Lilly & Co., et al.*, E.D. Missouri, C.A. No. 4:05-2144.

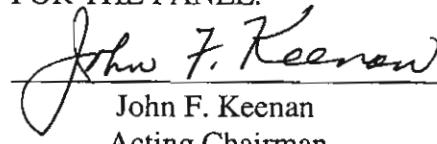
actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Eastern District of New York was a proper Section 1407 forum for actions involving claims of liability related to the prescription drug Zyprexa. *See In re Zyprexa Products Liability Litigation*, 314 F.Supp.2d 1380 (J.P.M.L. 2004). Motions for remand to state court, along with any other pretrial motions, can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

The objecting physician defendants argue, inter alia, that the presence of individual questions of fact should militate against inclusion of the claims against them in the MDL-1596 proceedings. We are unpersuaded by this argument. Inclusion of the claims against the defendant doctors pertaining to Zyprexa in the MDL-1596 proceedings has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; and 2) allows pretrial proceedings with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues. *See, e.g., In re Ephedra Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L.*, 199 F.R.D. at 436-38. The Panel is persuaded, however, that claims involving prescription drugs other than Zyprexa do not share sufficient questions of fact with claims relating to Zyprexa to warrant inclusion of the former claims in MDL-1596 proceedings.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the 24 actions listed on Schedule A are transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Jack B. Weinstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that claims relating to prescription medications other than Zyprexa are simultaneously separated and remanded to i) the Western District of Missouri in *Antoinette Harper v. James True, M.D., et al.*, W.D. Missouri, C.A. No. 4:05-1255; and ii) to the Eastern District of Missouri in the remaining 23 actions listed on Schedule A.

FOR THE PANEL:


John F. Keenan
Acting Chairman

SCHEDULE A

MDL-1596 -- In re Zyprexa Products Liability Litigation

Eastern District of Missouri

Vivek Agarwal v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1935 **JCH**
Gloria Benson v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2016 **SNL**
David Prince v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2086 **CDP**
Robert Clark v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2119 **SNL**
Earl Cain, Jr. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2120 **JCH**
Carole Holden v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2121 **SNL**
Anthony Howard, etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2122 **CDP**
Mary Hunter v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2123 **JCH**
James V. West, Jr. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2124 **CDP**
Michael Johnson v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2138 **HEA**
Andrea Hanks v. Eli Lilly & Co., et al., C.A. No. 4:05-2144 **JCH**
Anastasia M. Martin v. Eli Lilly & Co., et al., C.A. No. 4:05-2150 **DTS**
James Sage, etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2152 **HEA**
Joyce Saunders v. Dr. Linda Hughes, et al., C.A. No. 4:05-2154 **SNL**
David Michael Deruyter v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2155 **CAS**
Kyle Rolfingsmeyer v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2156 **SNL**
Laura Hurst v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2181 **CES**
Joyce Lehar v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2182 **JCH**
C.M., etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2183 **CAS**
Erin Martin v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2190 **HEA**
Tina Robinson v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2199 **JCH**
Magdalena Maurice v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2293 **CAS**
Peggy Bledsoe, etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-2330 **ERW**

Western District of Missouri

Antoinette Harper v. James True, M.D., et al., W.D. Missouri, C.A. No. 4:05-1255

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DOCKET NO. 1596
IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION**

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U.S. District Court
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U.S. Magistrate Judge
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JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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A rectangular stamp with the words "RECEIVED" at the top, "MAIL" at the bottom, and "U.S. DISTRICT COURT" and "EASTERN DISTRICT OF MO" in the center. The date "APR 18 2006" is printed vertically to the left of the center text.